

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1513 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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J C SONI

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner
NOTICE SERVED for Respondent No. 1
MR SP HASURKAR for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 25/04/2000

ORAL JUDGEMENT

#. Mr.I.S.Supehia, learned advocate for the petitioner.
Mr.Hasurkar, learned Additional G.P. Mr.Digant Joshi,
learned A.G.P. for Mr.Hasurkar, for the respondent.

#. Rule. With the consent of the parties the matter is taken up for final disposal today. The present Spl.C.A. is filed by the petitioner on the facts that due to criminal prosecution the petitioner was suspended from 5.3.1990, thereafter he came to be reinstated on 2.6.1995 as he came to be acquitted in the criminal prosecution on 18.2.1995.

#. It is the case of the petitioner that thereafter the authorities have passed an order dated 30.11.1996 which is produced at Annexure-E page 55-56 of the petition. By the said order the authorities have ordered that the period of suspension is to be treated as such and the same is not to be treated on duty. Being aggrieved by this, the petitioner made a representation to the authority but the same also came to be rejected by an order dated 6.4.1999. The present petition is filed challenging both these orders.

#. Mr.Supehia, the learned advocate for the petitioner has relied upon the two orders of this court which are produced at Annexure-H and Annexure-J. Annexure-H is a order passed by this court in Spl.C.A. No.2530/98 (Coram : N.M.Mathur,J) dated 14.7.1998 Annexure-J is an order in 763/93 (Coram: R.K.Abichandani,J) dated 20.8.1993. It is the case of Mr.Supehia, that once the petitioner is reinstated in service on 2.6.1995, in view of the order passed by this court in Spl.C.A. No.763/93 dated 20.8.1993 wherein it is specifically mentioned that

"The petitioner has placed reliance on the Government Circular of GAD dtd.6th April, 1995 as amended by the circular dtd.13th April, 1970 in which it was provided that in case of acquittal, full pay and allowances should be admissible for the period of absence from duty. The Government servant who was placed under suspension with a specific object of prosecution or pending prosecution in the Court of law, should be reinstated in service upon acquittal and the entire period from the date of suspension till the date of reinstatement should be treated as duty for all purposes."

#. Mr.Digant Joshi, learned A.G.P. appearing for the respondent submitted that the acquittal of the present petitioner in criminal prosecution was on a technical ground and therefore the department has decided to proceed with the departmental proceeding against the petitioner and in view of that fact passing of the orders

by the respondent at Annexure-E page 55 and Annexure-G page 60 are justified.

#. Looking to the fact and circumstances of the case it is deemed fit that the present petition be allowed to the extent that both these orders shall be quashed and the authority shall be directed to pass a fresh order after granting an opportunity of hearing to the petitioner before passing any order on the point as to whether the period of suspension shall be treated as such or on duty. The present petition is allowed only on this short ground that the impugned orders were passed without affording an opportunity of hearing to the petitioner.

#. The impugned order at Annexure-E and Annexure-J are quashed and the authority is directed to pass a fresh order after granting an opportunity of hearing to the petitioner. It is expected that the authority will pass a fresh order as early as possible but not later than 31.7.2000. Rule is made absolute to the aforesaid extent.

kks